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Before the
Federal Communications Commission
Washington, D.C. 20554

MAR 5 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Petition for Declaratory Ruling and Request)	CC Docket No. 96-98
for Expedited Action on the July 15, 1997)	
Order of the Pennsylvania Public Utility)	
Commission Regarding Area Codes 412, 610,)	
215, and 717)	

**REPLY COMMENTS ON SECOND REPORT AND ORDER,
ORDER ON RECONSIDERATION IN CC DOCKET NO. 96-98 AND
CC DOCKET NO. 99-200, AND SECOND FURTHER NOTICE
OF PROPOSED RULEMAKING IN CC DOCKET NO. 99-200**

1. Introduction and Summary.

Global NAPS, Inc. ("Global NAPS") respectfully submits these reply comments in response to the December 7, 2000 *Numbering Resource Optimization Second Report and Order and Second Further Notice of Proposed Rulemaking* ("2d R&O"), pursuant to ordering paragraph 202 of the 2d R&O. Global NAPS, including its affiliates, is a competitive local exchange carrier ("CLEC") certified to provide services in approximately twenty states and actively providing service in Florida, Massachusetts, Maryland, New Hampshire, New York, Rhode Island, and Virginia.

There is widespread support in the comments for the effectiveness of rate center consolidation as a number conservation tool. The main objection to its use comes from commenters who assume that any loss in intraLATA toll revenues caused by rate center consolidation would be made up, dollar-for-dollar, in local rate increases by incumbent local

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exchange carriers (“ILECs”). As discussed below, there is no reason to think that this is actually a serious concern. Rate-regulated ILECs have no legal entitlement to any particular level of revenues; instead, they have an entitlement to a non-confiscatory level of earnings. In the absence of evidence that any particular ILEC is in financial *extremis*, there is no reason to think that some or all of the revenue declines attributable to rate center consolidation could not be absorbed without local rate increases. Moreover, the evidence relied on most heavily by the commenters on this point assumed that rate center consolidation would result in a complete elimination of intraLATA toll charges. In fact, less thoroughgoing efforts at rate center consolidation could still make substantial contributions to number conservation, but with less impact on ILEC revenues — if such revenues need to be preserved.

2. Global Naps Supports A Mandatory Federal Program Of Rate Center Consolidation As The Only True Solution To The Numbering Crisis

A. Rate Center Consolidation Has Widespread Support in the Industry and From Regulators

Many commenting parties support the use of rate center consolidation. For example, WorldCom, like Global NAPs, understands that addressing the inefficiencies associated with the current organization of rate centers and their role in determining rates is the fundamental problem the Commission should address.¹ Allegiance Telecom called consolidation a “vital yet underused number conservation tool.”²

¹ See *Comments of WorldCom, Inc.*, CC Docket No. 99-200 (rec’d Feb. 14, 2001). In fact, WorldCom proposes actually divorcing *all* rating intelligence from the NPA-NXX structure in favor of a “transparent” numbering system. *Id.* at 5-8.

² *Comments of Allegiance Telecom, Inc.*, CC Docket No. 99-200 at 13 (Feb. 14, 2001).

The Personal Communications Industry Association³ correctly points out that rate center consolidation is “superior to virtually all other optimization measures” for four reasons. First, consolidation frees vast amounts stranded numbers for little cost. Second, it can be immediately implemented with little impact on industry. Third, it allows for more efficient use of numbering resources by *all* classes of carriers, because consolidation is not dependent on local number portability (“LNP”) and thus can be implemented more broadly than other measures such as pooling (which is LNP-dependent).⁴ Fourth, consolidating rate centers increases the effectiveness of other optimization programs such as number pooling because it lessens carrier need for numbers on the front-end. Pooling, on the other hand, reassigns numbers after they have already been inefficiently distributed—consolidation, thus, would reduce the number of codes to be pooled.

BellSouth also recognizes the value of rate center consolidation and has supported such efforts in its nine-state region. It supports consolidation even though it finds that certain classes of carriers are discouraged from participating in consolidation by the way in which Months-To-Exhaust (“MTE”) is calculated.⁵ Despite its opposition to the MTE rule, BellSouth still supports consolidation as a conservation device because it recognizes that reducing the number of rate centers lowers carriers’ demand for NXX codes.⁶ Qwest Corporation also supports rate center

³ See *Comments of the Personal Communications Industry Association*, CC Docket No. 99-200 (Feb. 14, 2001).

⁴ See *Comments of Allegiance Telecom, Inc.*, at 14.

⁵ See *BellSouth Corporation Comments*, CC Docket No. 99-200 at 11-12 (Feb. 14, 2001). BellSouth opposes requiring a carrier to calculate Months-To-Exhaust at the rate center level when a carrier has multiple switches in a rate center. See *id.*

⁶ See *id.* at 14.

consolidation as a number conservation tool notwithstanding its disagreement with the specifics of the MTE and utilization calculations.⁷

Finally, several state public utilities commissions also support rate center consolidation. Indeed, the California Public Utilities Commission (“CPUC”) is under a state statutory duty to evaluate rate center consolidation,⁸ and the CPUC recognized consolidation as an “opportunity to build upon the progress California has made via number pooling in extending the life of California area codes, and thus the entire NANP.”⁹ The CPUC noted that several states have already implemented successful consolidation programs including Colorado, Missouri and Washington.¹⁰ It asked that the state, industry and the FCC work together through an FCC-sponsored workshop.¹¹ Indeed, the Michigan PSC encouraged the FCC to develop a nationwide consolidation program.¹²

B. The Principle Objection to Rate Center Consolidation is Misguided.

Several parties opposing rate center consolidation have suggested that the inevitable impact of such an action is an increase in local calling rates. The basis for this suggestion seems to be an assumption that ILECs have some sort of legal entitlement to their current level of *revenues*. While relevant regulatory legislation varies from state to state, as a general

⁷ See *Comments of Qwest Corporation to Second Further Notice of Proposed Rulemaking*, CC Docket No. 99-200 at 3-4 (Feb. 14, 2001). Like BellSouth, Qwest also argues that changes in the MTE calculations, as well as utilization thresholds, are necessary corollaries to a consolidation program.

⁸ See *Further Comments of the California Public Utilities Commission and of the People of the State of California*, CC Docket No. 99-200 at 7 (Feb. 14, 2001) (citing California Public Utilities Code § 7935(a)).

⁹ *Id.*, at 7.

¹⁰ See *id.*, at 8.

¹¹ See *id.*

¹² See *Michigan Public Service Commission Further Comments on Numbering Resource Optimization*, CC Docket No. 99-200 at 5 (Feb. 14, 2001).

ratemaking proposition, regulated firms such as the ILECs are entitled not to any particular level of *revenues*, but rather to a level of *earnings* that is non-confiscatory when viewed in light of prudently incurred expenses and investments. *See generally Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1988). It follows that unless an ILEC's earnings today are at the bare minimum level needed to avoid "confiscation" in the constitutional sense, it is simply not the case that a decrease in toll revenues in any sense "needs" to be made up with an increase in local revenues.

In this regard, many of those who express reservations about rate center consolidation do so based on a misunderstanding of a study published by Economics and Technology Inc. ("ETI").¹³ Many states cited this study for the proposition that rate center consolidation would lead to inevitable and, in some cases, significant increases in local rates.¹⁴ Other states, such as Florida and New York, raise the same concern without expressly citing the study. *See* NY PSC Comments at 3; FL PSC Comments at 7.

In fact, however, that is not what the study says or even implies. The reason is that the ETI Study's analysis of potential rate increases resulting from rate center consolidation was made on the basis of three conservative "worst case" assumptions, none of which is likely to be true in the real world. First, this aspect of the study assumes that rate center consolidation would eliminate "*all* intraLATA toll [...], i.e., where the *entire LATA was recast* as a single LATA-wide center." ETI Study at 32 (emphasis added). Second, it assumes that ILECs are entitled to recover all *revenues* lost to consolidation. *See id.* As discussed above, this is unlikely to be true

¹³ *See Where Have All the Numbers Gone? (Second Edition) Rescuing the North American Numbering Plan from Mismanagement and Premature Exhaust*, Economics and Technology Inc. (June 2000) ("ETI Study").

¹⁴ This study was expressly cited in the comments of the California PUC (*see* CPUC Comments at 7), the Michigan PSC (*see* Michigan PSC Comments at 4) and the New Hampshire PUC (*see* NH PUC Comments, section II). In fact, the ETI Study is specifically cited in the "State Coordination

in most cases. Third, it assumes that whatever ILECs recover, they would recover these revenues by adding those costs to local rates. *See id.* Any veteran of a rate case knows, however, that once a “revenue requirement” (*i.e.*, an earnings shortfall of constitutional dimension) has been proven to exist, the entire issue of “rate design,” (*i.e.*, what specific rate adjustments will produce the needed revenue) still remains. It is far from obvious that increases in residential basic rates are the only logical place for any necessary rate increases.

Other commenters, on the other hand, recognize that the telecommunications industry is moving toward cost-based pricing and that the current rating structure is no longer appropriate because the distance-sensitive portion of interoffice transport of calls is truly insignificant. As the National Association of State Utility Consumer Advocates noted in its comments, “the industry is moving toward a pricing model that reduces...the reliance on rate centers for pricing purposes in a competitive environment.” *Comments of the National Association of State Utility Consumer Advocates to the Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200* at 16 (Feb. 14, 2001).

But the key point remains that even if rate center consolidation might affect ILEC revenues, it may still be perfectly lawful to impose that revenue loss on an ILEC that is earning above the constitutionally protected floor. Global NAPs recognizes that it has not been fashionable in recent years to focus on this constitutional principle of ratemaking — *i.e.*, that it is perfectly lawful to decrease the revenues of a regulated carrier if doing so would serve the public interest and would not be confiscatory. Even so, the extraordinarily severe consequences that would follow from the exhaustion of the numbering resources in the NANP indicate that this issue must be directly and responsibly addressed and considered. Putting the matter in (blunt)

Group” template attached to a number of state commission filings. *See* SCG template, discussion of

ratemaking terms, if a regulated ILEC could absorb the loss of toll revenues that would result from (e.g.) elimination of all intraLATA toll in a state without depressing earnings below a confiscatory level, there is no general legal bar to imposing such a revenue decrease.¹⁵

But even if an ILEC could not absorb the requisite revenue decrease without depressing earnings below a confiscatory level, that hardly means that there is no alternative but to allow the perpetuation of anachronistic, non-cost-based, and anti-competitively small rate centers. First, other than a company in some sort of financial *extremis* (and none of the major ILECs seems to be remotely in such a condition), ILECs could certainly absorb *some* of the impact of lost toll revenues attendant upon rate center consolidation. So perhaps consolidation that does not amount to LATA-wide local calling could be implemented in various states without an impact on residential rates subject to the protections embodied in Section 254's universal service policies.

Second, however, this concern about local rates highlights an issue that affects not only the immediate problem of numbering resources, but indeed local competition more generally. That is the difficulty most (if not all) states have had in actually implementing the portable, competitively neutral, explicit and sufficient subsidies to basic services that Section 254 envisions. If the local service rates that would result from rate center consolidation in a particular state would be so dramatic as to render the resulting telephone service "unaffordable," then the service should be explicitly subsidized by a competitively neutral, portable universal service payment. The difficult problem of subsidized local rates — and how to make those subsidies explicit, predictable, and competitively neutral — has been simmering in the industry

¶¶ 146, 148 of the notice in this matter.

¹⁵ Again, particular states may have legislation that gives ILECs more protection against non-confiscatory revenue decreases than are mandated by established constitutional ratemaking principles; to the extent that this is a state-level rate issue, each state would need to assess its own statutory framework on this point.


since the passage of the 1996 Act, and it was only a matter of time before something brought it to a head. If the exhaustion of the NANP is not a sufficiently serious issue to do so, it is hard to imagine what would be.

For these reasons, Global NAPs urges the Commission to adopt requirements for rate center consolidation for implementation by individual states. In doing so the Commission should make clear that there is no federal requirement that reductions in ILEC toll revenues be offset in a revenue neutral manner by increases in other rates, and should urge states to require real proof of confiscatorily-low earnings from affected ILECs before shying away from undertaking substantial efforts to free up numbers by consolidating rate centers.

3. Conclusion.

For the reasons stated above and in Global NAPs' opening comments, Global NAPs urges the Commission to establish a mandatory federal standards for states to apply in implementing rate center consolidation. States should be encouraged to engage in the maximum level of rate center consolidation that is permissible without imposing confiscatory earnings levels on the affected ILECs. Otherwise, the enormous cost and disruption associated with the exhaust of the North American Numbering Plan will be incurred for no better reason than allowing ILECs to retain their current level of revenues, irrespective of whether they are in fact legally or constitutionally entitled to such revenues.

Respectfully submitted,



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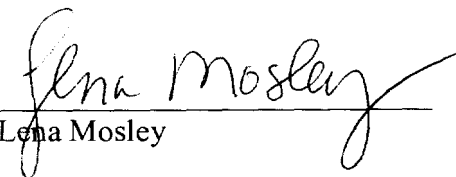
Dated: March 5, 2001

CERTIFICATE OF SERVICE

I, Lena Mosley, do hereby certify that on this 5th day of March, 2001 a true and correct copy of the foregoing *"Reply Comments on Second Report and Order, Order On Reconsideration In CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200"* has been sent to the following via Courier:

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